

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL HOWARD,

Plaintiff,

v.

T. BAILEY, *et al.*,

Defendants.

Case No. 3:22-cv-00064-MMD-CSD

ORDER

Pro se Plaintiff Michael Howard brings this action under 42 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Craig S. Denney (ECF No. 8), recommending the Court allow Howard’s Fourth Amendment excessive force claim to proceed but dismiss with prejudice Howard’s equal protection claim and Defendants Washoe County and City of Sparks. Howard had until May 6, 2022, to file an objection, but to date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R in its entirety.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

1 Because there is no objection, the Court need not conduct de novo review, and is
2 satisfied Judge Denney did not clearly err. Here, Judge Denney recommends allowing
3 Howard's Fourth Amendment excessive force claim to proceed against Defendants Bailey
4 and Fye. (ECF No. 8 at 3-4.) In his First Amended Complaint (ECF No. 5), Howard alleges
5 that Fye slammed him to the ground during his arrest, despite that Howard was not
6 resisting, and that Howard ultimately required medical and dental treatment because of
7 the incident. Judge Denney reasoned that because Howard alleges Fye used more force
8 than was reasonably necessary and Bailey did not intervene, Howard has plausibly stated
9 a claim for excessive force under the Fourth Amendment. (ECF No. 8 at 4.) Judge Denney
10 further noted that although both the original complaint and the First Amended Complaint
11 include reference to the Eighth Amendment, claims for excessive force are cognizable
12 under the Fourth Amendment, and recommends that Howard be permitted to proceed
13 with his Fourth Amendment claim. (*Id.*)

14 Judge Denney recommends that the Court dismiss Howard's equal protection
15 claim because Howard has not established that he is a member of a protected class nor
16 plausibly established a class-of-one claim. (*Id.* at 5.) Because the First Amended
17 Complaint lacks sufficient facts to proceed, and because Howard has already been given
18 leave to amend his equal protection claim but failed to cure its deficiencies, Judge Denney
19 recommends the claim be dismissed with prejudice. The Court agrees with Judge
20 Denney. Having reviewed the R&R and the record in this case, the Court will adopt the
21 R&R in full.

22 It is therefore ordered that Judge Denney's Report and Recommendation (ECF
23 No. 8) is accepted and adopted in full.

24 It is further ordered that Howard may proceed with his Fourth Amendment
25 excessive force claim against Defendants T. Bailey and Ken Faye.

26 It is further ordered that the equal protection claim is dismissed with prejudice, as
27 amendment would be futile.

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1 It is further ordered that Defendants Washoe County and the City of Sparks are
2 dismissed from this action with prejudice.

3 DATED THIS 12th Day of May 2022.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE
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